

IN THE CHANCERY COURT FOR THE COUNTY OF JACKSON
STATE OF MISSISSIPPI

MIKE MOORE, ATTORNEY GENERAL
ex rel, STATE OF MISSISSIPPI,
Plaintiff,

vs.

NO. 94-1429

THE AMERICAN TOBACCO COMPANY; AMERICAN
BRANDS, INC.; R.J. REYNOLDS TOBACCO
COMPANY; RJR NABISCO, INC.; BATUS
CORPORATION; BROWN & WILLIAMSON TOBACCO
CORPORATION; PHILIP MORRIS COMPANIES,
INC.; PHILIP MORRIS INCORPORATED
(PHILIP MORRIS U.S.A.); LIGGETT GROUP,
INC.; LIGGETT & MYERS, INC.; BROOKE
GROUP, LIMITED; LOEWS CORPORATION;
LORILLARD CORPORATION; THE COUNCIL FOR
TOBACCO RESEARCH-U.S.A., INC.
(SUCCESSOR TO TOBACCO INSTITUTE
RESEARCH COMMITTEE); THE TOBACCO
INSTITUTE, INC.; HILL & KNOWLTON,
INC.; CORR-WILLIAMS TOBACCO COMPANY;
GENERIC PRODUCTS CORPORATION; LAUREL
CIGAR & TOBACCO COMPANY, INC.; LONG
WHOLESALE, INCORPORATED; THE LEWIS BEAR
COMPANY; WIGLEY AND CULP, INC. OF
GULFPORT, MISSISSIPPI; "A" THROUGH "Z"
ENTITIES (M.R.C.P. 9(h),
Defendants.

DEPOSITION OF

MEYER SCHWARTZ, M.D.

March 27, 1997

9:55 a.m.

520 Greene Street
Augusta, Georgia

ROBERT W. SCHEID, CCR-B-1461, RPR

BROWN REPORTING, INC.
513 ELLIS STREET
AUGUSTA, GEORGIA 30901
(706) 724-2778

APPEARANCES OF COUNSEL

On behalf of the Plaintiffs:

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On behalf of the Defendant
RJR:

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Atlanta, Georgia 30308-3242

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1 MR. BURTON: This will be the
2 deposition of Dr. Meyer Schwartz taken in the
3 above-referenced cause by the defendants.
4 The deposition is taken for any and all
5 purposes permitted by the Mississippi Rules
6 of Civil Procedure. The deposition is also
7 taken in accordance with the terms of the
8 case management order in this place -- or in
9 place in this case.

10 Is that agreeable?

11 MS. FLOWERS: Absolutely.

12 MR. BURTON: Would you state your full
13 name for the record, please, sir?

14 Oh, swear the witness.

15 MEYER SCHWARTZ, M.D.,
16 having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION.

19 BY MR. BURTON:

20 Q. Would you state your full name for the
21 record, please, sir?

22 A. Meyer Paul Schwartz.

23 Q. And where do you live, Dr. Schwartz?

24 A. [DELETED]

25 Q. Would you briefly summarize for us your

1 educational history, or background?

2 A. Starting where?

3 Q. After high school.

4 A. I went to Washington University in St.
5 Louis for undergraduate and I went to Creighton
6 University School of Medicine in Omaha; went to
7 Grady Memorial in Atlanta for an internship and one
8 year of surgical training, decided I didn't like it,
9 and transferred to the Medical College of Georgia
10 here in Augusta for family practice residency.

11 Q. Being from Atlanta, I can understand that
12 your year at Grady was probably an interesting year.

13 A. Very much so. Taught me a lot.

14 Q. Saw a lot more things than you probably
15 anticipated. When did you get out of Washington
16 University in St. Louis?

17 A. 1978.

18 Q. And what was your degree?

19 A. Bachelor's in biology.

20 Q. And then you went to Creighton University
21 in 1979?

22 A. Yes. Well, it would be the same year,
23 '78.

24 Q. '78. And how long were you at Creighton?

25 A. Four years.

1 Q. And what was your degree there?

2 A. M.D.

3 Q. Okay. That's where you did your medical
4 school work?

5 A. Yes.

6 Q. And then you did a one-year internship at
7 Grady in Atlanta and then transferred to the
8 medical --

9 A. No, I did one year of internship and then
10 I did one year of residency at Grady.

11 Q. So you were in Atlanta for two years?

12 A. Two years of schooling, yes.

13 Q. And then you came to the Medical College
14 of Georgia in family practice?

15 A. Actually, I did walk-in medicine, which
16 is primary care, for two years in Atlanta. So in
17 1986, I came to the Medical College.

18 Q. So you've been at the Medical College for
19 the last 10 or 11 years?

20 A. No. Clinical faculty. I think I'm
21 assistant in clinical, which means my only tie to
22 the school is that I teach med students. But I've
23 only been doing that for 2-1/2 years. So in between
24 my graduation from residency, which was January '89,
25 until about 2-1/2, 3 years ago, I had no ties to the

1 Medical --

2 Q. You were in private practice.

3 A. In private practice.

4 Q. Have you ever been deposed before, Dr.
5 Schwartz?

6 A. For this or ever?

7 Q. Ever.

8 A. Once.

9 Q. So you understand the purpose of the
10 deposition.

11 A. To some extent, yes.

12 Q. Well, my purpose today is to ask you some
13 questions about the brand logo study that you were
14 involved in with Dr. Fischer in the late 80s and
15 early 90s. I believe it was published in 1991.

16 If at any time I ask you a question that
17 you don't understand, would you please let me know?

18 A. Uh-huh.

19 Q. Other things, just as a ground rule, if
20 you would answer out loud --

21 A. Yes.

22 Q. -- as opposed to nodding your head. Then
23 if we will both try -- and I will freely admit that
24 I am bad about this -- try not to talk at the same
25 time, because it's difficult for the court reporter

1 to get down. So we need to try to wait until each
2 other finishes before we either ask a question or,
3 answer a question, okay?

4 A. Okay.

5 Q. You mentioned that you were in private
6 practice after your residency at the Medical College
7 of Georgia ended in 1989, correct?

8 A. Yes.

9 Q. And you've been in private practice for
10 the last seven years?

11 A. Yes.

12 Q. And for the last 2-1/2 years, then,
13 you've had an affiliation at the Medical College by
14 teaching medical students.

15 A. Yes.

16 Q. And what do you teach?

17 A. I teach one to two students at a time in
18 family practice.

19 Q. Do you have any training in advertising?

20 A. No.

21 Q. Any training in marketing?

22 A. No.

23 Q. Any training in consumer behavior?

24 A. No.

25 Q. What professional associations are you a

1 member of?

2 A. The American Academy of Family Practice.

3 Q. Any others?

4 A. The state medical society and the county
5 medical society.

6 Q. Do you have any affiliation with an
7 organization by the name of DOC --

8 A. No.

9 Q. -- or Doctors Ought to Care?

10 A. No.

11 Q. Do you know what that organization is?

12 A. I know only loosely what it is.

13 Q. What do you understand it is?

14 A. It's a loose affiliation of physicians
15 who promote healthy lifestyles for patients.

16 Q. Would you characterize it as an
17 anti-smoking group?

18 MS. FLOWERS: Object to the form.

19 THE WITNESS: I wouldn't know enough
20 about them.

21 Q. (By Mr. Burton) You are the coauthor of
22 the brand logo study with Dr. Fischer that was
23 published in 1991, correct?

24 A. Yes.

25 Q. Other than coauthoring that study with

1 Dr. Fischer, what has your relationship with Dr.
2 Fischer been over the years?

3 A. He was one of my faculty when I was a
4 resident.

5 Q. And what course was he teaching?

6 A. Family practice.

7 Q. Other than having him as a faculty member
8 in family practice when you were with the Medical
9 College of Georgia and coauthoring the brand logo
10 study with Dr. Fischer, is there any other
11 relationship between the two of you?

12 A. No.

13 Q. Tell me how you got involved in the brand
14 logo study.

15 A. Probably to the best of my recollection
16 would be that I had asked Dr. Fischer if there was
17 any study that I could help him do, and that was one
18 that he was interested in doing.

19 Q. When you first got involved in the brand
20 logo study, at what stage was it?

21 A. He had already thought about that he
22 wanted to do the study.

23 Q. What did he tell you his reason for doing
24 the study was?

25 A. His son was about -- probably about three

1 years old at the time and they had gone out to
2 dinner and he had taken a straw and had put it up to
3 his mouth and said that when he grew up, he wanted
4 to be older and drive cars and smoke cigarettes.

5 Q. Other than having decided that he wanted
6 to do the study, had any steps been taken, actually,
7 in terms of the research or the design of the study
8 when you got involved?

9 A. I don't know that.

10 Q. What was the first thing you did in
11 connection with the study?

12 A. Submitting the requests for -- I don't
13 remember the exact terms, but through the human
14 assurance committee at the Medical College.

15 Q. I think we have that document. Who else
16 was involved in researching this study, other than
17 yourself and Dr. Fischer?

18 A. Do you mean who else collected data?

19 Q. Yes.

20 A. The only one else I know of is Tina
21 Rojas.

22 Q. Did you not have any contact with either
23 John Richards or Adam Goldstein?

24 A. No. I'm sorry. Not with Adam. But with
25 Rick Richards, I don't know when he would have been

1 involved in it. Though at the very beginning, no.

2 Q. Was this the first study you ever were.
3 involved in?

4 A. No.

5 Q. What other studies had you been involved
6 in at the time you assisted Dr. Fischer with the
7 brand logo study?

8 A. When I was in college, I helped do a
9 study on bone growth; continued doing another study
10 on bone growth in medical school; and in residency,
11 I participated in a study on why do family
12 physicians not want to do obstetrics.

13 Q. Were these surveys of various ages -- of
14 a various segment of the population, like children,
15 or were they just clinical studies?

16 A. None involved children.

17 Q. Did they involve surveying people,
18 individuals?

19 A. The one on family physicians not doing
20 obstetrics involved surveying residents, graduating
21 residents.

22 Q. The bone growth studies would be what I
23 would describe as clinical studies?

24 A. Yes.

25 Q. Do you know when the data collection

1 actually started for this study? That is, the brand
2 logo study.

3 A. I don't remember.

4 Q. Do you know over what period of time data
5 was collect for this study?

6 A. I believe it was a few months.

7 Q. What did you understand the purpose of
8 the study to be?

9 A. To see whether children could recognize
10 varying logos as to their product.

11 Q. Did you understand that one of the
12 purposes of the study was to see whether children
13 recognized cigarette logos?

14 A. In the context of all of the other logos,
15 yes.

16 Q. Did you have any role in actually
17 designing the study?

18 A. I don't know what specifically you mean.

19 Q. What I mean -- you mentioned that when
20 you got involved, Dr. Fischer had already come up
21 with the idea to do the study, correct?

22 A. Yes.

23 Q. Had the game board been developed?

24 A. No.

25 Q. Did you have any involvement in the

1 preparation for the game board?

2 A. Not that I remember.

3 Q. Did you have any role or involvement in
4 the selection of the products that were going to be
5 tested?

6 A. I don't remember.

7 Q. Did you have any role in the selection of
8 the logos that would be used?

9 A. I don't remember that different than the
10 products.

11 Q. Do you remember there being any
12 discussion about the age of the subjects and who
13 would be studied?

14 A. I knew the approximate ages were going to
15 be between three and six.

16 (Defendant's Exhibit 1 was marked for
17 identification.)

18 Q. (By Mr. Burton) Dr. Schwartz, I'm going
19 to show you what's been marked as Defendant's
20 Exhibit 1 and ask you to take a look at that.

21 A. (Witness complies with request of
22 counsel.)

23 Q. Can you identify Exhibit 1 for me,
24 please?

25 MS. FLOWERS: Do you have another

1 copy?

2 MR. BURTON: Yes.

3 THE WITNESS: It says "Product Symbol
4 Recognition By Preliterate Children."

5 Q. (By Mr. Burton) Did you have any role in
6 the preparation of this document?

7 A. Not that I remember.

8 Q. It refers to preliterate children, Dr.
9 Schwartz. Who does that mean, to your
10 understanding?

11 A. Those who are not able to read.

12 Q. And if you look down about two-thirds of
13 the way down the page, it refers to human subjects,
14 and it says 200 three- to four-year-olds.

15 Do you see that?

16 A. Yes.

17 Q. Was the original plan for this study to,
18 as this document suggests, study 200 three- to
19 four-year-olds?

20 A. I do not remember this specific document
21 nor their ages.

22 Q. Do you remember any discussion about
23 including five- and six-year-olds into the study?

24 A. No. May I add one thing?

25 Q. Sure.

1 A. I was in Atlanta, and most of this would
2 have been carried on in Augusta.

3 Q. You were in Atlanta during the time the
4 data was collected?

5 A. Yes.

6 Q. When did you actually physically come to
7 Augusta?

8 A. I returned back to Augusta in
9 approximately 1991.

10 Q. Was it your understanding that the
11 children that would be surveyed would be in Atlanta
12 or Augusta or both?

13 A. Both.

14 Q. How were the schools that were going to
15 be surveyed selected?

16 A. I don't know how all of them were
17 selected.

18 Q. How were the ones that you were involved
19 in selected?

20 A. As I remember, probably mainly on
21 convenience of location.

22 Q. How many schools were you involved in
23 selecting?

24 A. I don't know the total; though all the
25 students in Atlanta, I collected.

1 Q. Was there data collected from more than
2 one school in Atlanta?

3 A. Yes.

4 Q. How many schools in Atlanta?

5 A. I don't remember.

6 Q. Who would know that?

7 A. I don't know.

8 (Defendant's Exhibits 2 and 3 were
9 marked for identification.)

10 Q. (By Mr. Burton) Let me show you what has
11 been marked as Defendant's Exhibit 2. I'm also
12 going to show you Defendant's Exhibit 3.

13 Can you identify for me, Dr. Schwartz,
14 Exhibits 2 and 3?

15 A. These are consent forms.

16 Q. Can you tell me which one was actually
17 used?

18 A. No, I couldn't tell you which one.

19 Q. This identifies you as the principal
20 investigator, does it not?

21 A. That's correct, that's correct.

22 Q. Tell me how that came to be.

23 A. Because I was the main person collecting
24 the data.

25 Q. At how many schools did you collect the

1 data?

2 A. I don't remember.

3 Q. Did you collect data at schools in both
4 Atlanta and Augusta?

5 A. I collected all of the Atlanta and one in
6 Augusta.

7 Q. And you can't tell me here today how many
8 schools that was?

9 MS. FLOWERS: Object to the form.

10 THE WITNESS: I can't remember how many
11 there were.

12 Q. (By Mr. Burton) And you cannot tell me
13 as you sit here today whether Exhibit 2 or Exhibit 3
14 was the one that was actually used?

15 MS. FLOWERS: Object to the form. We
16 know this is direct testimony. He's not been
17 a witness by either case. We just ask that
18 if you really want him to determine which one
19 he used, you give him time to read both of
20 them.

21 Q. (By Mr. Burton) Have you had a chance to
22 read both of them?

23 A. Yes.

24 Q. Does that help you determine which one
25 was actually used?

1 A. It appears that there might have been
2 different ones used in different locations.

3 Q. Tell me what you mean by that.

4 A. On the Exhibit No. 2, it lists please
5 contact Meyer Schwartz, and on Exhibit 3, it lists
6 contact Tina Rojas.

7 Q. And what does that mean to you?

8 A. That different people would have been
9 contacted, and presumably there would have been
10 different people going out to the sites.

11 Q. Exhibit 2 also has the place for the date
12 and the time and the location blank, does it not?

13 A. Yes, it does.

14 Q. And Exhibit 3 refers to Kindercare.

15 A. Yes.

16 Q. Were all of the preschools that were
17 surveyed Kindercare facilities?

18 A. In Augusta or in all locations?

19 Q. Well, let's start with the entire study.

20 A. I don't know.

21 Q. How about in Augusta?

22 A. I certainly do not know that.

23 Q. How about Atlanta?

24 A. I don't remember, though I would think it
25 would be unlikely.

1 Q. To your recollection, Dr. Schwartz, did
2 the age of the children to be surveyed play any role
3 in how the survey was designed?

4 A. I don't know that answer.

5 Q. Did you have any role in deciding how the
6 study would be conducted?

7 A. I don't know what you mean by that.

8 Q. Well, you have a game board and you have
9 logos and you have decided that -- or Dr. Fischer
10 has said that he wants to do this study. Did you
11 sit down with Dr. Fischer or Miss Rojas either
12 together or in some group and say How are we going
13 to do this in words or substance?

14 A. I'm sure we did.

15 Q. Do you recall any of those discussions?

16 A. Not other than to plan out how it would
17 need to function.

18 Q. And when you say "plan out how it would
19 need to function," what do you mean?

20 A. How do we present the board? How do we
21 present the cards? How do we not lead the
22 children? How do we obtain consent?

23 Q. Tell me what you recall about those
24 topics.

25 A. The board is -- actually, there was a

1 two-piece practice round to get the kids used to
2 what we were going to do. And then the game board
3 was placed flat and then the stack of cards was
4 upside down and they were turned over one by one and
5 the children were asked to match them or what does
6 it remind you of.

7 And then regardless of their answer, to
8 be positive, the consent was left at the daycare
9 center and the parents took it home. Then the next
10 time they brought their children back, the consent
11 form was given to whoever was doing the study. And
12 then the kids were brought one at a time away from
13 their group.

14 Q. Okay. Let me see if I can briefly
15 summarize what you said. Well, let me go back.

16 Did you have any role in the development
17 of the questionnaire that went home with the
18 children?

19 A. Are you asking me what would be Exhibit
20 2?

21 Q. No, sir. There was a questionnaire that
22 was sent home with the parents --

23 A. Oh, demographics?

24 Q. -- asking a host of questions before the
25 children were selected for the study, correct?

1 A. If you're referring to demographics, I
2 probably had little input.

3 Q. Bear with me a moment while I try to
4 locate it. As I understand it, the questionnaire
5 was developed, and then it was distributed to
6 students at a given school?

7 A. Yes.

8 Q. Do you have any idea how the schools were
9 selected?

10 A. I still don't know.

11 Q. Do you know how you selected the schools
12 in Atlanta?

13 MS. FLOWERS: Objection, asked and
14 answered.

15 Go ahead.

16 THE WITNESS: Probably more for
17 convenience of location than anything else.

18 Q. (By Mr. Burton) And you went to the
19 school and you handed out the parental
20 questionnaire?

21 A. Yes. No, that's not correct. I handed
22 the questionnaire to the people who worked there,
23 who then distributed to the children.

24 Q. So at least with those schools you were
25 involved in, you didn't have any contact directly

1 with the parents or the kids before they arrived to
2 actually participate in the study.

3 A. That's correct.

4 Q. And did you leave enough questionnaires
5 for all of the children in a given daycare center?

6 A. Enough for the predicted amount, yes.

7 Q. When you say "predicted amount," what do
8 you mean?

9 A. It certainly could be possible that an
10 extra child may come in that hadn't been there
11 another day, though it was enough for however many
12 would be on average expected from their role.

13 Q. You left enough for there to be one for
14 each family that typically had a child in a given
15 daycare center.

16 A. Yes.

17 Q. And then they gave those to the parents
18 and the parents went home and presumably filled them
19 out?

20 MS. FLOWERS: Object to the form.

21 Q. (By Mr. Burton) Is that correct? You
22 may answer.

23 A. Could you repeat that for me, please?

24 Q. Let me rephrase it.

25 (Defendant's Exhibit 4 was marked for

1 identification.)

2 Q. (By Mr. Burton) I'm going to show you --
3 I've gone ahead and marked this Exhibit 4. I'm
4 actually going to come back to it and use it later,
5 but the first page of Exhibit 4 is a parental
6 questionnaire, is it not, Dr. Schwartz?

7 A. Yes.

8 Q. Now, did you have any role in compiling
9 that?

10 A. Did I make up these questions?

11 Q. Yes, yes.

12 A. I don't believe so.

13 Q. But this is the questionnaire that you
14 delivered to the daycare center.

15 A. Yes.

16 Q. And you left what instructions with the
17 daycare center?

18 A. That they should ask the parents of the
19 children, if they wanted to participate in the
20 study, what the study was about, that it would take
21 a short period of time, and if they have any
22 questions, the numbers are on the front.

23 Q. And then some number of the parental
24 questionnaires were returned the next day?

25 A. I don't know that answer. What

1 percentage?

2 Q. Or how did you -- when did you pick up
3 the parental questionnaires that had been completed?

4 A. The day of the study.

5 Q. Do you know how long had elapsed between
6 the time you dropped them off and the day of the
7 study?

8 A. One to two days.

9 Q. And did you test -- or did every child
10 that completed a questionnaire participate in the
11 study?

12 A. I don't know if I have enough information
13 for that.

14 Q. Do you recall engaging in some kind of
15 selection process by which you would determine
16 whether all of the children in a given daycare
17 center would participate in the study or some lesser
18 number?

19 A. In advance? Did we decide how many would
20 at each site participate?

21 Q. That wasn't my question, but I'm --

22 A. I'm sorry. That's what I was trying to
23 understand.

24 Q. Okay. Did you do that?

25 A. No.

1 Q. Did you do more than one location at the
2 same time?

3 A. No. Oh, I personally did not, but I
4 can't specify that Tina Rojas didn't do one on the
5 same day as I did in a different city.

6 Q. But for the ones you did in Atlanta, you
7 did one school at a time?

8 A. One school at a time.

9 Q. And did every child that completed the
10 questionnaire participate in the study as far as you
11 know in with respect to the ones that you surveyed?

12 A. If their parental consent was given, I
13 believe that is correct.

14 Q. In other words, you went to Daycare
15 Center A and you would let each child whose parents
16 had completed the questionnaire participate in the
17 study.

18 A. Yes.

19 Q. And you didn't decide based on some
20 criteria that some would participate and some
21 wouldn't, even though all of them had completed the
22 questionnaire?

23 A. To the best of my knowledge, all of the
24 people who finished the questionnaire participated
25 in Atlanta.

1 Q. And then you went and picked up the
2 questionnaires on a day and conducted the studies
3 the same day.

4 A. Yes.

5 Q. And you briefly told us a moment ago how
6 the study was conducted. The game board was put in
7 front of the child.

8 A. Yes.

9 Q. And there was some test or sample,
10 example given?

11 A. Yes.

12 Q. And then the cards, logos were shown to
13 the child and the child was instructed to try to
14 match the logo to the product.

15 A. Yes.

16 Q. Do you recall how the products were
17 arranged on the game board?

18 A. Which was in which corner? No, I do not.

19 Q. Did you have any role in deciding how
20 they would be placed on the game board?

21 A. No.

22 Q. Who would have done that?

23 A. I don't know.

24 Q. As far as you know, then, was it
25 coincidence that the cigarette ended up in the

1 middle on the bottom row and that Mickey Mouse ended
2 up in the top -- middle top on the top row?

3 MS. FLOWERS: Object to the form of the
4 question.

5 THE WITNESS: I don't believe in
6 coincidence, as a personal belief. My
7 understanding would be that knowing Paul
8 Fischer, they were arranged randomly through
9 some form of random generation.

10 Q. (By Mr. Burton) And what do you mean by
11 that?

12 A. In studies where there are different
13 objects, you can randomize them using mathematics,
14 though I am certainly less capable at statistics.
15 That's not my expertise.

16 Q. Do you know how many game boards there
17 were?

18 A. To the best of my knowledge, there are
19 two.

20 Q. One that you used and one that was used
21 in Augusta?

22 A. Yes.

23 Q. How is it that you ended up collecting
24 data at one of the schools in Augusta?

25 A. If I remember correctly, I had already

1 moved back to Augusta.

2 Q. So the study, then, was conducted for a
3 period of time in which you were in transition. You
4 were in Atlanta part of the time and in Augusta part
5 of the time?

6 A. I had not anticipated coming back to
7 Augusta.

8 Q. But nevertheless, you collected some data
9 while you were in Atlanta, moved to Augusta, and
10 then collected the balance of the data.

11 A. It may have been that I was in town --
12 it's possible that one school that I did in Augusta
13 was when I had just actually come back to visit in
14 Augusta.

15 Q. Tell me what you recall about the order
16 in which the logos were to be exhibited to the
17 child.

18 A. To the best of my knowledge, they're
19 randomized.

20 Q. Do you recall there being some guidelines
21 in that regard?

22 A. I don't particularly remember that either
23 way.

24 (Defendant's Exhibit 5 was marked for
25 identification.)

1 Q. (By Mr. Burton) I'm going to show you,
2 Dr. Schwartz, what we have marked as Defendant's
3 Exhibit 5. Actually, I'm going to substitute this
4 because I've marked on that one.

5 I'm going to ask if you can identify what
6 will be marked as Exhibit 5.

7 A. It says at the top it is a random order
8 grouping key.

9 Q. Do you recall ever seeing that document
10 before?

11 A. I do not remember seeing it.

12 Q. Do you remember there being any
13 discussion about the order in which the cards were
14 to be exhibited to the children?

15 A. I don't remember either way.

16 Q. When you said a moment ago you thought
17 the cards were to be randomized, what did you mean
18 by that?

19 A. That they would be placed in different
20 orders for different children.

21 Q. Would that be on a child-by-child basis
22 or on a group-of-children-by-group-of-children
23 basis?

24 A. Though not remembering exactly, I would
25 guess it would be child to child.

1 Q. Let's take a look at the bottom of
2 Exhibit 5, if you would. It say "Divide" -- and
3 tell me if I read this incorrectly -- "Divide all
4 daycare center subjects into five equal-sized groups
5 as nearly as possible and present each group the
6 picture cards in a different random order according
7 to the above."

8 Did I read that correctly?

9 A. Yes.

10 Q. Now, what I understand that to mean is
11 that at a given daycare center, say you have 17
12 children. You would take the first five and show
13 them in Order A, the second five in Order B, the
14 third five in Order C, and then you would have two
15 that would see it in Order D.

16 Is that what you understand that to mean?

17 A. That's what it appears to mean.

18 Q. And does that refresh your recollection
19 as to how you collected the data or randomized the
20 cards with respect to the students you surveyed?

21 A. No.

22 Q. You think you did each individual child
23 differently?

24 A. I don't remember.

25 Q. Why was randomizing the cards important?

1 A. It would improve the statistical
2 accuracy, though not guarantee it.

3 Q. What you wanted to make sure is that all
4 children did not see the cards in the same order.

5 MS. FLOWERS: Object to the form of the
6 question.

7 THE WITNESS: Assuming that that
8 matters.

9 Q. (By Mr. Burton) Well, it mattered enough
10 that you were trying to avoid it, correct?

11 A. Correct.

12 MS. FLOWERS: Object to the form.

13 Q. (By Mr. Burton) Now, what were the
14 instructions, if there were any, with respect to
15 what you were to say to these children during the
16 survey?

17 A. To ask them to try to match, or to place
18 the card on top of the board and to give positive
19 feedback regardless of a right or a wrong answer.

20 Q. When you say "positive feedback," what do
21 you mean?

22 A. To say "very good" or "that's great."

23 Q. Was there to be any other dialogue, as
24 you recall, between whoever was administering the
25 study and the student?

1 A. If they didn't answer, we would say try.

2 Q. Indeed, they were not given the option of
3 saying "I don't know," were they?

4 MS. FLOWERS: Object to the form.

5 THE WITNESS: I don't know that answer.

6 Q. (By Mr. Burton) What were you instructed
7 to do if a child said they didn't know?

8 A. At this late date, I don't remember the
9 answer to that.

10 (Defendant's Exhibit 6 was marked for
11 identification.)

12 Q. (By Mr. Burton) Okay. Let me show you
13 what's been marked as Defendant's Exhibit 6.

14 Can you identify that for me, Dr.
15 Schwartz?

16 A. It says a data collection script.

17 Q. Does that refresh your recollection as to
18 what you said to these children while you were
19 conducting the study?

20 A. We were to certainly try to follow this
21 approximately in advance, yes.

22 Q. What were you to do when children asked
23 questions?

24 A. I don't remember that/ ever being
25 addressed.

1 Q. When you say it wasn't addressed, do you
2 mean what to do if they asked questions wasn't
3 addressed or you don't recall any children asking
4 any questions?

5 A. Both are actually true.

6 Q. Do you remember making notations of
7 comments that children made throughout any study
8 that they may have participated in?

9 A. I don't particularly remember, although
10 there may be a copy on some of these forms.

11 Q. Was there any emphasis in making notes of
12 comments that may have had to do with cigarettes or
13 smoking?

14 A. I don't remember that.

15 Q. When the children gave an answer, you
16 were to record that, correct?

17 A. Yes.

18 (Defendant's Exhibit 7 was marked for
19 identification.)

20 Q. (By Mr. Burton) I'll show you what we've
21 marked as Defendant's Exhibit 7 and see if you can
22 identify that.

23 A. That is the data collection form.

24 Q. And if I understand this correctly, it is
25 the data collection form for Group A, which should

1 mirror the logos shown in Column A of Exhibit 5.

2 A. Yes.

3 Q. Correct?

4 A. That is correct.

5 Q. And there were different data collection
6 forms for Groups A, B, C, D, and E?

7 A. Yes.

8 Q. And who would fill out this data
9 collection form?

10 A. The person who was collecting the
11 children's answers.

12 Q. Who tabulated the results?

13 A. I don't know.

14 Q. Did you tabulate the results of yours?

15 A. No.

16 Q. What did you do with the information?

17 A. Gave this back to Dr. Fischer.

18 Q. The subject ID number in the lower left
19 corner, what was to go in there?

20 A. I can only assume the child's number for
21 the study.

22 Q. The child's --

23 A. Number in the study.

24 Q. Did you number them chronologically?

25 A. I did not number any of them, I don't

1 believe.

2 Q. So to the extent a number was put in
3 there, it would be put in there after the data
4 collection forms were collected and sent back to Dr.
5 Fischer?

6 MS. FLOWERS: Object to form.

7 THE WITNESS: I believe that is
8 correct.

9 Q. (By Mr. Burton) Other than gather data,
10 do you know what Miss Rojas did in connection with
11 this study?

12 A. Know for certain or make a reasonable
13 assumption?

14 Q. I'd like you to make a reasonable
15 assumption.

16 A. She may have put the data into a
17 computer.

18 Q. Do you know when that was done?

19 A. No.

20 Q. Do you know if anybody assisted her in
21 that?

22 A. I don't know.

23 Q. And did you understand it to the extent
24 that you did not gather the data from the schools?
25 It was Miss Rojas who gathered the data at the

1 schools?

2 MS. FLOWERS: Objection to form.

3 THE WITNESS: I did Atlanta.

4 Q. (By Mr. Burton) Is it your understanding
5 that Miss Rojas did Augusta?

6 A. I don't know who gathered Augusta, though
7 I know that she did at least one of the schools.
8 May I stop and ask one question?

9 Q. Sure.

10 THE WITNESS: What does "object to the
11 form" mean?

12 MS. FLOWERS: It means that I think he
13 may be asking you, in this case, a leading
14 question which suggests the answer, and I
15 don't think he's allowed to do that on
16 direct. But we'll take that up later with
17 the Court unless he chooses to try to
18 rephrase it at the time.

19 THE WITNESS: Thank you.

20 MR. BURTON: It's legal jargon.

21 Q. (By Mr. Burton) We looked at a document
22 that we marked earlier that spoke in terms of
23 surveying 200 three- to four-year-old children.

24 When do you recall the decision was made
25 to study six-year-olds?

1 A. I don't know them as independent.

2 Q. You don't recall any discussion about
3 doing those after the study had started, for
4 example?

5 MS. FLOWERS: Object to the form.

6 THE WITNESS: Again, I was not privy to
7 most of what was going on.

8 Q. (By Mr. Burton) Did you collect the data
9 for the six-year-olds?

10 A. I do not remember what all I collected.
11 I know that I collected all of Atlanta. So if the
12 six-year-olds were in Atlanta, then that would be my
13 collection.

14 Q. And you did one school in Augusta,
15 correct?

16 A. And one school in Augusta.

17 Q. What was the school you did in Augusta?

18 A. I'm sorry, I don't remember.

19 Q. Do you recall doing an elementary school,
20 as opposed to a daycare, sir?

21 A. I don't remember any way either way.

22 Q. Do you remember whether or not an
23 elementary school was included in the sample?

24 A. I don't remember either way.

25 Q. And to the extent an elementary school

1 was included in the survey, you would not know
2 anything about how that school was selected, what
3 criteria were used, anything of that nature?

4 A. Are you saying that you know that an
5 elementary school was used?

6 Q. Dr. Fischer has testified that an
7 elementary school was used.

8 A. Okay. So assuming that, your question is
9 what again, please?

10 Q. Do you have any idea or knowledge
11 concerning how the elementary school was selected?

12 A. If that school was in Atlanta, then the
13 answer is it was a convenience sample. So it was
14 not picked for any specific socioeconomic, this
15 percentage of kids are white, this percentage are
16 African-Americans, this percentage is smoker,
17 nonsmoker -- I'm sorry, smoker parents, nonsmoker
18 parents, income level. It was a convenience study.

19 Q. So you didn't take race or socioeconomic
20 level into account in picking the schools at which
21 you conducted the survey?

22 MS. FLOWERS: Object to the form of the
23 question.

24 THE WITNESS: To my recollection, I
25 picked a convenience group, because Atlanta,

1 as you know, is a very large city, and I have
2 limited time outside my practice.

3 Q. (By Mr. Burton) Did you take race into
4 account when selecting the schools?

5 A. I personally did not take anything into
6 account other than can I do this.

7 Q. To your knowledge, Dr. Schwartz, did the
8 design -- excuse me. Did the methodology in which
9 you conducted the study differ at any of the schools
10 that you surveyed?

11 A. I have found out since that the answer to
12 that is that it did, in fact, differ.

13 Q. How did you find that out?

14 A. I was told.

15 Q. By whom?

16 A. Dr. Fischer told me.

17 Q. And when did Dr. Fischer tell you that?

18 A. When I received the subpoena.

19 Q. Did he call you or did you call him?

20 A. He called me.

21 Q. And tell me what he said during that
22 conversation.

23 A. He called me and said that I had received
24 the subpoena already. And he said that he was being
25 deposed what will be tomorrow. And he said that the

1 question is that the six-year-olds that were done in
2 Atlanta were not randomized.

3 Q. And what was your response? You did not
4 realize that until he phoned you?

5 A. That's correct.

6 Q. Other than what you've described in the
7 conversation, did anything else take place? Was
8 anything else said?

9 A. With Dr. Fischer?

10 Q. Yes.

11 A. I don't remember anything else.

12 Q. Have you talked to --

13 A. Oh, I'm sorry. He did say that Miss
14 Flowers may talk to me.

15 Q. Did you, in fact, talk to Miss Flowers
16 before this morning?

17 A. Yes.

18 Q. And tell what Miss Flowers said to you
19 and what you said to Miss Flowers.

20 A. She told me what to expect of a
21 deposition and told me how it would be conducted.
22 And then she told me last night that it was going to
23 be filmed.

24 Q. How long last night did you speak with
25 Miss Flowers?

1 A. The first time, probably 20 minutes.

2 Q. And the second time?

3 A. Less than five.

4 Q. Since you spoke with Dr. Fischer and
5 learned that there had been a problem with the order
6 in which the six-year-olds were shown the cards,
7 have you had a chance to reflect on that problem at
8 all?

9 MS. FLOWERS: Object to the form.

10 THE WITNESS: What would it mean to
11 reflect?

12 Q. (By Mr. Burton) Think about it.

13 A. In what way?

14 Q. How it may have occurred.

15 A. I can say that it was an accident.

16 Q. You don't recall any discussions about
17 how the cards were going to be shown to
18 six-year-olds?

19 A. Are you asking me did we plan to show the
20 six-year-olds in a different way than the other
21 children?

22 Q. Yes, sir.

23 A. No, there was no discussion as to that.

24 Q. Was that intentionally done, Dr.
25 Schwartz?

1 A. That the six-year-olds would be done
2 differently?

3 Q. Yes, sir.

4 A. It was not done intentionally.

5 Q. Were you responsible for doing it?

6 A. My understanding is that six-year-olds
7 were collected in Atlanta. Therefore, I am
8 responsible.

9 Q. Did Dr. Fischer report to you any other
10 problems with the study?

11 A. That is the only problem that I
12 personally know of, other than those that would be
13 standard for any study that are listed in the
14 journal article.

15 Q. Okay. We'll get to that in a moment. Do
16 you recall that there was a lapse of time between
17 the time the three- , four- , and five-year-olds
18 were surveyed on the one hand and the six-year-olds
19 were surveyed on the other hand?

20 A. I do not remember that.

21 Q. Do you recall that the six-year-olds were
22 surveyed sequentially and last?

23 A. I do not remember that either way.

24 Q. Do you have any explanation for how that
25 may have occurred?

1 MS. FLOWERS: Object to the form of the
2 question.

3 THE WITNESS: I don't remember that to
4 be the case either way.

5 (Defendant's Exhibit 8 was marked for
6 identification.)

7 Q. (By Mr. Burton) I'm going to show you,
8 Dr. Schwartz, what we've marked as Exhibit 8. Take
9 a moment and look at that and see if you can
10 identify that.

11 A. This is at least one form of the article
12 brand logo recognition.

13 Q. Look, if you would, at Page 7, which
14 bears in the lower right-hand corner F00009. Are
15 you on that page?

16 A. Yes.

17 Q. The first full paragraph says "Subjects
18 were recruited from Georgia schools, five preschools
19 and one public elementary school in Augusta and four
20 preschools in Atlanta." Do you see that?

21 A. Yes.

22 Q. Does that refresh your recollection as to
23 where the elementary school was?

24 A. This says that it was in Augusta.

25 Q. Do you have any reason to disbelieve

1 that?

2 A. No.

3 Q. Then goes on to say "The schools were
4 selected in intent to balance the sample for race
5 and socioeconomic variables."

6 A. Yes.

7 Q. You did not do that, though, did you?

8 MS. FLOWERS: Object to the form.

9 THE WITNESS: I personally did not do
10 mine that way, though it is certainly
11 possible that five schools in Augusta, if
12 their socioeconomic variable were different
13 than the ones in Atlanta, that would, in
14 fact, balance the sample.

15 Q. (By Mr. Burton) Well, that would assume
16 that the people in Augusta know which schools you
17 did in Atlanta, correct?

18 A. The people in Augusta would have known
19 the area of town that I was in.

20 Q. What area was that?

21 A. I was in practice in Lawrenceville, which
22 is Gwinnett County.

23 Q. And that's predominantly white, correct?

24 A. As I understand the statistics, it is
25 very much so white.

1 Q. And upper middle class?

2 A. I would only be guessing, but I would say
3 yes. I'm sorry, you said upper middle?

4 Q. Yes.

5 A. It's certainly middle.

6 Q. Do you know what either the ratio or
7 socioeconomic variations are with Augusta?

8 A. These that were chosen?

9 Q. Yes.

10 A. No, I do not.

11 Q. Do you know what county in Augusta the
12 schools were chosen from?

13 A. I know there are only two counties that
14 make up Augusta, so it would be either Richmond or
15 Columbia.

16 Q. You don't know which one?

17 A. No. But I would think most of these
18 schools would be in Richmond County, just by
19 population alone, and the fact that the Medical
20 College is in Richmond County.

21 Q. Having looked at Exhibit 8 and seeing
22 that the elementary school was in Augusta -- at
23 least I understand that you acknowledge that you
24 conducted a survey of the elementary school -- does
25 that refresh your recollection at all with respect

1 to where that elementary school was that was
2 surveyed?

3 A. This was done in Augusta.

4 Q. Do you remember what county?

5 A. No, I do not.

6 Q. Do you recall having any disagreements
7 with Dr. Fischer about how this study was
8 conducted? The methodology used, anything of that
9 sort?

10 A. I don't feel I have enough knowledge
11 either then or now to dispute whether the
12 methodology was appropriate or not.

13 Q. Did Dr. Fischer essentially establish the
14 methodology?

15 A. I don't know who did.

16 MS. FLOWERS: Object to the form.

17 THE WITNESS: I do not know who did.

18 Q. (By Mr. Burton) You did not.

19 A. That's correct.

20 Q. Is it fair to say, Dr. Schwartz, that
21 what you did is what Dr. Fischer told you to do?

22 A. I certainly tried to comply with the
23 study protocol.

24 Q. How is it that you were the principal
25 investigator with respect to a study that was being

1 funded out of the Medical College of Georgia when
2 you were living in Atlanta doing your residency at
3 Grady Hospital?

4 MS. FLOWERS: Object to the form of the
5 question, the characterization of the
6 document in review.

7 THE WITNESS: That's not correct, what
8 you've asked.

9 Q. (By Mr. Burton) Okay. How is it wrong?

10 A. When this study was done, it was done
11 just after I had finished the program at the Medical
12 College of Georgia and had moved to be in practice
13 in Atlanta. So it had already been six to seven
14 years after I had already left Grady.

15 Q. So you had left Grady, come to Augusta to
16 do your residency in family practice, and then moved
17 back to the Atlanta area?

18 A. Yes.

19 Q. What role, Dr. Schwartz, do you have in
20 the actual preparation of the article that appeared
21 in the Journal of the American Medical Association?

22 A. I saw the draft and certainly could make
23 any comments on it that I chose to make.

24 Q. That draft being what we've marked as
25 Exhibit 8?

1 A. I don't know if this is the draft or if
2 this is the final form. It says settlement by JAMA
3 up there at the top. I assume this would be the
4 final form.

5 Q. Who wrote the article?

6 A. The vast bulk of this would have been
7 written by Dr. Fischer.

8 Q. Do you recall making any editorial
9 changes to the draft?

10 A. If I made any, it would be absolutely
11 minor.

12 Q. You read it before it was submitted,
13 correct?

14 A. I read at least a draft of it.

15 Q. And believed it to be accurate.

16 A. I believed it to be accurate.

17 Q. Did you do anything to check, get
18 yourself comfortable that it was accurate? Or did
19 you just basically accept it on its face?

20 MS. FLOWERS: Object to the form.

21 THE WITNESS: I wouldn't actually know
22 how to answer that. I certainly trust that
23 Dr. Fischer is an ethical researcher and that
24 he tried to do the study as fairly and as
25 impartially as he could and interpret the

1 data as it came about.

2 Q. (By Mr. Burton) So the answer to my
3 question, then, is you assumed -- you did not do
4 anything independently to investigate the accuracy
5 of the report.

6 MS. FLOWERS: I'm going to have to
7 object to the form of the question. It's
8 leading. I know this is direct testimony and
9 I know we're just trying to move this along,
10 but I really wish you'd try to formulate some
11 more direct questions.

12 Q. (By Mr. Burton) Did you do anything to
13 individually investigate the accuracy of the report?

14 A. I did not try to verify that the
15 statistics were correct.

16 Q. When do you recall, Dr. Schwartz, that
17 the issue came up as to whether this article would
18 be published in JAMA?

19 A. I'm sorry. Could you say that again?

20 Q. When did the prospect of this article
21 being published in JAMA first come up?

22 A. I know that when this study was finished
23 and the statistics all done, there is maybe an
24 unspoken order that you would try to get a paper
25 published. And that would include certain journals.

1 Q. Do you recall any discussion about that
2 at the time data was being collected?

3 A. Where it might be submitted.

4 Q. Yes, sir.

5 A. I don't recall any direct discussion
6 about where it might be submitted.

7 Q. Did Dr. Fischer ever tell you that this
8 study was specifically designed from its inception
9 with intention to how the research might be covered
10 in the popular press?

11 A. Never.

12 Q. Does that bother you?

13 MS. FLOWERS: Object to the form.

14 Q. (By Mr. Burton) Did Dr. Fischer ever
15 tell you that the research methods used were those
16 that are intuitively understandable by the public?

17 A. I don't remember him ever saying that.

18 Q. Tell me, Dr. Schwartz, whether in your
19 judgment -- strike that. What feature of this
20 article garnered the most public attention?

21 A. I would have to be judging what I
22 perceive and not what the public perceives.

23 Q. What do you perceive?

24 A. I would say that as children get older,
25 that Joe the Camel is as recognizable as Disney's

1 Mickey Mouse.

2 Q. Dr. Fischer wrote that the analysis that
3 best captured the attention of the press was a
4 comparison of the logo recognition of Mickey Mouse's
5 silhouette as it appears on the Disney Channel and
6 the Old Joe cartoon character.

7 Would you agree with that?

8 A. That he had said that?

9 Q. Would you agree with that statement?

10 A. Could you read it again, please?

11 Q. Yes. The analysis that best captured the
12 attention of the press was the comparison of the
13 logo recognition of Mickey Mouse silhouette as it
14 appears on the Disney Channel and the Old Joe
15 cartoon character. By the age of six, both were
16 recognized by nearly 90 percent of the children?

17 A. Dr. Fischer may believe that. That is
18 correct, yes.

19 Q. And do you agree with that?

20 A. I can't judge that, for what the press
21 felt for me. This is not very much important to me
22 in my life, and I didn't follow it maybe that
23 carefully.

24 Q. You're talking about the study?

25 A. The study or the results of the study or

1 what has been in the press since that time.

2 (Defendant's Exhibit 9 was marked for
3 identification.)

4 Q. (By Mr. Burton) Let me show you what's
5 been marked -- can you identify Exhibit 9 for me,
6 Dr. Schwartz?

7 A. It's a copy of the Journal of the
8 American Medical Association dated December 11,
9 1991.

10 Q. And this is a copy of the article as it
11 appeared in the Journal of the American Medical
12 Association, correct?

13 A. Yes.

14 Q. Flip over to Page 2 of that article, if
15 you would, under the section "Methods." Do you see
16 that? "Methods" appears in the upper left-hand
17 corner?

18 A. Yes.

19 Q. About halfway down through the second
20 paragraph, there's a sentence that says "No logos
21 had specific image or word clues that might indicate
22 what kind of product the brand represented, e.g.,
23 the Marlboro man was not smoking."

24 Do you see that?

25 A. I see that, yes.

1 Q. Tell me what you understand that to mean.

2 A. That the logo itself did not contain a.
3 clue as to the product.

4 Q. And why did you understand that was
5 important?

6 A. Because a visual clue associated with the
7 logo would allow for matching.

8 (Defendant's Exhibit 10 was marked for
9 identification.)

10 Q. (By Mr. Burton) Let me show you what's
11 been marked as Exhibit 10. See if you can identify
12 that for me.

13 A. It appears to be the cards, a copy of the
14 cards that were shown to the children.

15 Q. And the last page, I believe, is a copy
16 of the game board?

17 A. Copy of the game board.

18 Q. Now, the sentence says that no logos had
19 specific image or word clues. By "word clues," what
20 does that mean?

21 A. The word "IBM" would not be followed by
22 the word "computer" or "Ford" by the word
23 "automobile."

24 Q. Now, Dr. Schwartz, you would agree if a
25 child could read, there's several word clues in

1 those flash cards, are there not?

2 MS. FLOWERS: Object to the form of the
3 question.

4 THE WITNESS: If the child could read,
5 they could read the name, which doesn't
6 necessarily, in my opinion, mean that they
7 would know what it is.

8 Q. (By Mr. Burton) But it increases the
9 likelihood that they would have a correct match,
10 doesn't it?

11 MS. FLOWERS: Object to the form.

12 THE WITNESS: I don't know if that's
13 ever been studied.

14 Q. (By Mr. Burton) Look at page -- I'm not
15 sure what page it is. One of the flash cards was
16 Domino's Pizza, correct?

17 A. That's what it appears, yes.

18 Q. And that does appear to have a word clue
19 that would match with the logo or the product on the
20 board, does it not?

21 A. That does appear to be.

22 Q. So at least with respect to the Domino's
23 Pizza flash card, the statement in the article is
24 not correct?

25 MS. FLOWERS: Object to the form.

1 THE WITNESS: I do not know that that
2 was the exact card.

3 Q. (By Mr. Burton) Let's assume for a
4 moment that it was.

5 A. Then it does, in fact, say "pizza."

6 Q. And so the statement that we just read in
7 the article to the extent that no logos had image or
8 word clues would not be correct?

9 MS. FLOWERS: Object to the form.

10 MR. BURTON: What's wrong with that
11 question?

12 MR. FLOWERS: I wish you could phrase
13 it directly other than suggesting the answer
14 to him.

15 THE WITNESS: The word "pizza" does
16 appear on this copy and there is a pizza on
17 the board.

18 Q. (By Mr. Burton) So based on that, tell
19 me whether or not you believe the statement "No
20 logos had specific image or word clues that might
21 indicate what kind of product the brand represented"
22 is accurate.

23 A. I don't know totally what the word "word
24 clue" would mean, though from this, it would appear
25 that the word "pizza" does occur on this card, which

1 would then imply that there is a pizza on the board.

2 Q. And making that statement accurate or
3 inaccurate? The statement in the study.

4 A. If the word "pizza" is a word clue, then
5 it could be understood that that does appear and it
6 would make it likely to match, if the child could
7 also read, yes.

8 Q. All right. Now, let's look down a little
9 further in the article. The article reads "Subjects
10 were recruited from ten preschools in Augusta and
11 Atlanta, Georgia."

12 A. Yes.

13 Q. Based upon what we've been over this
14 morning, tell me whether or not you think that
15 statement is correct.

16 A. I did not know at this point -- I don't
17 believe that an elementary school was also chosen.

18 Q. Well, if we look at Exhibit 8, which is,
19 I believe, a draft of the study, it refers to an
20 elementary school, correct?

21 A. Okay.

22 Q. So you would have known that an
23 elementary school was involved before the study was
24 published.

25 A. That is assuming some variables that I

1 may not know. One is I don't know if I saw all of
2 the drafts.

3 Second, I don't know if there were
4 changes made in editorial rewriting that took out
5 the word "preschool" and "elementary school" in
6 Augusta and Atlanta for space requirements or
7 whatever the editor chose, which may also hold for
8 any other similar news.

9 Q. But we have established that an
10 elementary school was surveyed.

11 A. I understand that's correct.

12 Q. So since an elementary school was
13 surveyed, tell me whether the statement in here,
14 "Subjects were recruited from ten preschools in
15 Augusta and Atlanta, Georgia," is correct or
16 incorrect?

17 A. May I ask a question?

18 Q. Sure.

19 A. That implies to me that I am making the
20 assumption that, potentially, I have lied by saying
21 that there were no elementary schools, because this
22 doesn't say it. And I can't say what the draft that
23 was sent, why it was changed, or, in fact, that I
24 even knew in advance that an elementary school was
25 chosen.

1 For me, at the time, I may have just run
2 through it and said ten preschools were chosen and
3 said that's perfectly reasonable and not affected in
4 any other way.

5 Q. I'm not suggesting that you intentionally
6 made any mistake. What I'm simply asking is: Is
7 that statement correct or incorrect based on the
8 information that you now have at your disposal?

9 A. The information now is that I understand
10 that there was an elementary school chosen, and this
11 sentence reads that ten preschools were chosen.

12 Q. Let's look a little further down under
13 the results. About halfway through that paragraph,
14 we see "166 were white and 63 were black."

15 Do you know whether that statement is
16 accurate or inaccurate?

17 A. At this point in time, I can only assume
18 that it is correct.

19 Q. Do you recall -- strike that. Were you
20 at all involved in compiling the data from the
21 schools in Augusta? You were not, were you?

22 A. "Compiling" meaning feeding them into a
23 computer?

24 Q. Yes.

25 A. No, I was not involved.

1 Q. Do you recall whether any of the children
2 surveyed by you were Hispanic or Eurasian or
3 oriental?

4 A. I don't remember the breakdown.

5 Q. Is that significant to you?

6 A. Whether I remember it or not?

7 Q. What the demographics were of the people
8 in the study.

9 A. I'm sorry. Could I have the complete
10 sentence again, complete question?

11 Q. Is the racial demographics of the
12 children participating in the study important?

13 A. It is important, though if it doesn't
14 match -- it is important, though you can certainly
15 do a study which doesn't include all races or ethnic
16 groups, etcetera, and list that as a limitation in
17 your study.

18 MR. BURTON: Jodi, may I see what I
19 think we marked as Exhibit 4?

20 MR. WATKINS: Is this it (indicating)?

21 MR. BURTON: Yes. Didn't we mark
22 this? I think I must have it.

23 Q. (By Mr. Burton) Looking at the study
24 which is Exhibit 9, at the bottom of the left-hand
25 column, last sentence of the, I guess, next to last

1 paragraph, it reads "The cards were randomized for
2 each subject to prevent bias due to the order of the
3 presentation." Did I read that correctly?

4 A. Yes.

5 Q. Now, based upon your discussion with Dr.
6 Fischer, you understand that that was not done,
7 correct?

8 MS. FLOWERS: Object to the form.

9 THE WITNESS: Six years later, I
10 understand that to be correct, though it
11 doesn't necessarily invalidate the study.

12 Q. (By Mr. Burton) Why do you say that?

13 A. Just because this wasn't randomized
14 doesn't mean that the matching was incorrect.

15 Q. Do you recall conducting any analysis to
16 determine what impact showing the six-year-olds the
17 cards in the same order would have on their
18 likelihood to correctly match the logos with the
19 products?

20 A. None was done because none was
21 understood. In other words, if that was not known
22 that that had not been randomized, no study would
23 have been done to see if randomization mattered.
24 And, besides, it still doesn't invalidate the study.

25 Q. Do you know what percentage of the

1 five-year-olds that were shown the cards in Order C
2 got it correctly?

3 A. I have no idea.

4 Q. Would it surprise you to find out it was
5 over 80 percent?

6 A. I wouldn't know either way.

7 Q. Nevertheless, the statement at the bottom
8 that I just read on the left-hand column on Page 2
9 of the study, is it correct or incorrect?

10 MS. FLOWERS: I'm sorry, which
11 statement?

12 MR. BURTON: "The cards were randomized
13 to prevent bias due to the presentation."

14 THE WITNESS: As I understand now, that
15 is not correct, though, again, does not
16 invalidate the study.

17 MR. BURTON: Why don't we take a short
18 break. Is that agreeable?

19 MS. FLOWERS: Sure.

20 MR. BURTON: We've been going about an
21 hour and 15 minutes.

22 (A recess was taken.)

23 Q. (By Mr. Burton) Dr. Schwartz, I want to
24 go back and ask you a few questions and then come
25 back to this article for a moment.

1 You were identified as the principal
2 investigator in connection with the study; is that
3 right?

4 A. Yes.

5 Q. What did you understand that to mean?

6 A. That I would be collecting the data and
7 potentially writing the paper.

8 Q. Did it involve anything other than data
9 collection, the role of principal investigator?

10 A. In the original?

11 Q. Yes.

12 A. It would have been to apply to the human
13 assurance committee, though technically, I couldn't
14 do that on my own because I was not faculty.

15 Q. Is that a requirement of the Georgia
16 Medical College?

17 A. My understanding is it would have been,
18 yes.

19 Q. Did your role as principal investigator
20 change at some point?

21 A. Yes.

22 Q. When and why?

23 A. Typically -- I don't know when it
24 particularly changed, but historically, the person
25 who is listed first in an article is the person who

1 does most of the work, which would be interpreting
2 the data and writing the article. And so at that
3 point, that was not my role.

4 Q. What was the reason that the principal
5 investigator was changed from you, presumably to Dr.
6 Fischer?

7 A. Yes.

8 Q. Why was that done?

9 A. Because this is well within his field of
10 expertise and has not anything to do with my
11 expertise.

12 Q. The subject matter of this article is
13 outside your expertise?

14 A. Yes.

15 Q. What is the significance of the fact that
16 you show up as the second author on the study as
17 published?

18 A. There are many different things that this
19 order could represent, though typically, the order
20 is who contributes how much to a study, with
21 education level often a role.

22 Q. What was Miss Rojas's position with the
23 Medical College at the time this research was
24 conducted and this article was published?

25 A. I don't know her specific title. I know

1 she was a research assistant.

2 Q. And describe for me as best you can what
3 you understand her role to have been in connection
4 with the study.

5 A. I understand that she collected the data
6 in Augusta and I understand that she would have been
7 the person who put the data in the computer.

8 Q. Anything else that she would have done?

9 A. She may have done other things, though I
10 do not know it.

11 (Defendant's Exhibit 11 was marked for
12 identification.)

13 Q. (By Mr. Burton) Let me show you what's
14 been marked as Defendant's Exhibit 11. Have you
15 ever seen that before?

16 A. No.

17 Q. Do you recognize the handwriting?

18 A. No.

19 Q. So you don't know who wrote or compiled
20 Exhibit 11?

21 A. No.

22 Q. Let's go back to Exhibit 4 for a moment,
23 and I'm going to ask you to take a more detailed
24 look at exhibit -- would you do that for me?

25 A. Yes. What would you like me to look at,

1 particularly?

2 Q. Take a look at -- I believe it represents
3 the parental questionnaires and data collection
4 forms for all of the six-year-olds.

5 A. It appears to represent the
6 six-year-olds.

7 Q. Let's just flip to the second page of
8 Exhibit 4. Is that your handwriting?

9 A. Yes. Or at least likely is.

10 Q. Let's flip to 2 or 3 so that we can get
11 some comfort level as to whether or not you were the
12 one that actually gathered the six-year-old data.

13 A. I agree these are my handwriting. I
14 don't agree all of them are.

15 Q. Tell me which ones are not.

16 A. I did see one at least. No. 230 is not
17 mine.

18 Q. That number in the lower left-hand
19 corner, whose handwriting is that in?

20 A. I don't have any idea.

21 Q. Now, the survey refers to 229 students
22 being surveyed.

23 A. Yes, it does.

24 Q. Can you explain how this has 230 on it?

25 A. No, I cannot.

1 Q. Look through these, if you would, and
2 tell me how many blacks or Hispanic are included in
3 this group.

4 A. Do you want me to count them?

5 Q. If you would please, yes. And while
6 we're doing this, why don't you tell us -- identify
7 any that is not denominated as Caucasian.

8 A. No. 218 does not have a designation,
9 unless it didn't reproduce.

10 No. 214 is oriental.

11 No. 213 is Eurasian. And that appears to
12 be it.

13 Q. So is it fair to say there does not
14 appear to be any children of the six-year-olds that
15 were black?

16 MS. FLOWERS: Object to the form.

17 THE WITNESS: No parents marked black
18 as a choice.

19 Q. (By Mr. Burton) And I believe you said
20 there was one oriental?

21 A. I believe there was one oriental.

22 Q. And one Eurasian?

23 A. Yes, and one not marked.

24 Q. We touched on the subject ID number in
25 the lower left-hand corner of the data collection

1 form. You say you do not know whose handwriting
2 that is in?

3 A. That's correct, I do not know.

4 Q. Do you know what the significance of that
5 number is?

6 A. I can only assume that it is the number
7 of children used in a geometric order.

8 Q. Let's go back to Exhibit 9. From your
9 review of the six-year-olds, Dr. Schwartz, I believe
10 you identified that there were children that
11 participated in this study that were neither black
12 nor Caucasian.

13 A. Yes.

14 Q. Take a moment and look, then, at the
15 sentence under results that says 166 were white and
16 63 were black and tell me whether you think, now
17 having a chance to review the data, whether you
18 think that data is correct or incorrect.

19 A. That appears to be incorrect.

20 Q. Now, among the products that were tested,
21 was beer one of them?

22 A. Yes, beer was one of them.

23 Q. Can you recall whether or not there is
24 any record of beer being reported in the article as
25 published, or beer being studied?

1 A. I don't recall particularly in the
2 article.

3 Q. Do you remember any discussion about why
4 beer would have been studied but excluded from the
5 article?

6 A. No, I do not remember.

7 Q. Do you remember what the results of the
8 study on beer were?

9 A. I don't remember ever seeing.

10 Q. Do you think it would have been important
11 for the readers of JAMA to know that beer was tested
12 but never reported?

13 A. I can't judge what the readers think
14 since the article -- that is not --

15 Q. Would it have been important for you as a
16 reader of JAMA to know that?

17 A. No, not particularly.

18 Q. I mentioned earlier an article that had
19 been written by Dr. Fischer in which he said -- and
20 this is a quote referring to this study -- "This
21 study was specifically designed from its inception
22 in terms of how the research might be covered in the
23 popular press."

24 That is not disclosed in the article as
25 published, is it, Dr. Schwartz?

1 MS. FLOWERS: Object to the form of the
2 question and the characterization of that
3 quote as directly attributable to Dr.
4 Fischer.

5 Go ahead and answer the question.

6 MR. BURTON: Dr. Fischer in his
7 deposition testified it was his own words.
8 And he is an author of the article.

9 MS. FLOWERS: He is an author of the
10 article. I don't know if he testified that
11 those were his own words.

12 THE WITNESS: Would you repeat the
13 question, please?

14 Q. (By Mr. Burton) Yes. Can you tell me
15 whether the brand logo study as published reflects
16 the fact that the study was designed from its
17 inception with intention to how the research might
18 be covered in the popular press?

19 A. That is not listed in this study, no.

20 Q. Do you think that would have been
21 important for the readers of JAMA to know?

22 A. The only answer I can give you is that I
23 was under a different impression as to why this
24 article was -- I'm sorry -- why this study was
25 done. And I can't make a judgment as to what

1 occurred in Dr. Fischer's mind or what he said later
2 on.

3 Q. Hypothetically, if you were reading an
4 article in JAMA, would you like to know whether it
5 had been designed specifically from its inception
6 with intention to how the research might be covered
7 in the popular press?

8 A. I probably wouldn't have cared either way
9 and I probably wouldn't have read that sentence, or
10 that part of it.

11 Q. You misunderstand my question.

12 A. I'm sorry.

13 Q. Do you read JAMA periodically?

14 A. Yes.

15 Q. Do you read medical journals
16 periodically?

17 A. Yes.

18 Q. Do you read studies, medical studies?

19 A. Yes.

20 Q. Would it be important to you to know in
21 reading one of the medical studies that the research
22 was specifically designed from its inception with
23 intention to how the research might be covered in
24 the popular press?

25 A. I don't know that that would necessarily

1 be important to me at all.

2 Q. You wouldn't want to know whether or not
3 it had been designed from its inception as to how it
4 would be covered in the press?

5 MS. FLOWERS: Objection, asked and
6 answered.

7 THE WITNESS: Whether it's covered in
8 the press doesn't necessarily mean that it's
9 a bad study or that its findings are invalid.

10 Q. (By Mr. Burton) But in evaluating the
11 study as a doctor, you would want to know that,
12 wouldn't you?

13 MS. FLOWERS: Object to the form.

14 THE WITNESS: To me, that probably
15 doesn't matter all that much.

16 Q. (By Mr. Burton) Would you want to know
17 that the research methods that were used were
18 selected because they were intuitively
19 understandable by the public?

20 A. No, not particularly.

21 Q. That wouldn't be important to you as a
22 reader?

23 A. I wouldn't think so. Most studies are,
24 in fact, difficult for me to understand even. So
25 that doesn't invalidate the study or its findings,

1 whether a person can understand it, unless I've not
2 understood your question.

3 Q. Okay. The brand logo study on its face
4 does not disclose, does it, that the research
5 methods were selected because they were intuitively
6 understandable by the public, does it?

7 A. No, it does not say that.

8 Q. Do you believe that it would be important
9 for a reader of JAMA to know in evaluating the
10 validity of that study?

11 MS. FLOWERS: Objection, asked and
12 answered.

13 THE WITNESS: I can only answer for me
14 that that does not particularly matter.

15 Q. (By Mr. Burton) We've touched on a
16 little earlier the fact that the purpose of the
17 study was known by yourself and Miss Rojas; do you
18 remember that?

19 A. What I've understood is that you're
20 telling me that Dr. Fischer has a different purpose,
21 so I can't answer that part. I can tell you that I
22 understood at that time the purpose was to study how
23 well children ages three to six could match an
24 advertising logo to its particular product. Any
25 other purpose, I couldn't answer.

1 Q. Did you understand that determining the
2 degree to which children could match logos of
3 cigarette products with cigarettes was a focus of
4 the study?

5 A. As part of the study, it is no more
6 important than comparing it to whether they could
7 recognize a car or pizza, though it is one of the
8 matches, yes.

9 Q. Well, did Dr. Fischer share with you his
10 views about smoking while this study was being
11 conducted?

12 A. Dr. Fischer and I were in different
13 cities. Dr. Fischer and I were in different cities.

14 Q. I understand, but you communicated while
15 the study was going on, correct?

16 A. Minimally, though I certainly know Dr.
17 Fischer's and most physicians' views on cigarettes.

18 Q. Have you ever had any discussions with
19 Dr. Fischer about his views on smoking?

20 A. As a formal discussion? Have we sat down
21 and that be the plans?

22 Q. No. I mean, in your dialogues with Dr.
23 Fischer over the years, have you learned what his
24 views on smoking are?

25 MS. FLOWERS: Objection, calls for

1 speculation.

2 Q. (By Mr. Burton) Has he ever told you
3 what his views on smoking are?

4 A. From a medical point of view, the answer
5 is yes, I know what his views are.

6 Q. And has he told you what those views are?

7 A. I understand his views to be that smoking
8 contributes to illness.

9 Q. Do you recall any discussion as to why in
10 setting up these studies, we had three logos that
11 dealt with smoking, as opposed to one with other
12 products?

13 A. No, I don't know that answer.

14 Q. Did it strike you as odd that you had the
15 three or four logos for cigarettes and only one for
16 other products?

17 A. No, it did not.

18 Q. Does that suggest to you that there is an
19 emphasis on determining a child's recognition of
20 cigarette logos as opposed to other products?

21 A. No.

22 Q. Would you agree, Dr. Schwartz, that in
23 conducting a study, it is preferable that the
24 interviewers be blind to the purpose of the study?

25 A. In some studies, that would certainly

1 matter.

2 Q. And in this case, the researchers were,
3 not blind to the purpose of the study, were they?

4 A. If you're asking me what my understanding
5 of the purpose was, then they were not blind, that
6 is correct.

7 Q. And is that disclosed in the article
8 marked as Exhibit 9?

9 A. No, it is not marked.

10 Q. Do you believe that would have been
11 important to the readers of JAMA, to know that the
12 readers were not blind to the purpose of the study?

13 A. I do not know whether that would be
14 important to readers. Again, quite a lot of these
15 do not invalidate the study or the results. There
16 would be a question as to whether this was conducted
17 in a perfect way or not.

18 Q. I appreciate your views on that, but I'm
19 going to move to strike the answer as nonresponsive.

20 We touched a little bit, Doctor, on what
21 happened if a child didn't know the answer. Do you
22 recall that?

23 A. I recall some of that, yes.

24 Q. Dr. Fischer has testified that the
25 children were not given an "I don't know" option.

1 Would you agree with that?

2 A. That Dr. Fischer said that?

3 Q. Would you agree that they were not given
4 an "I don't know" option?

5 A. There's no blank for "I don't know,"
6 correct.

7 Q. Which means they were forced to choose?

8 A. No, they were not forced to choose.

9 Q. What was their option?

10 A. "Forced to choose" implies to me that
11 there was a punishment or a coercion in a negative
12 way which demands that they choose, and that was not
13 done.

14 Q. I didn't pick those words out of the
15 blue. "Forced choice" or "forced to choose" were
16 the words used by Dr. Fischer in describing how the
17 children were required to make the choice.

18 A. I understand that. "Forced to choose"
19 implies something different than "forced choice," to
20 me. And that may be a very subtle distinction, but
21 it's one that, as a researchist, is important.

22 Q. But regardless of whether it's forced to
23 choose or forced choice, the fact of the matter is:
24 Children did not have an opportunity to simply say
25 "I don't know what that logo means."

1 MS. FLOWERS: Object to the form.

2 MR. BURTON: What's the nature of the
3 objection?

4 MS. FLOWERS: "What it means." I think
5 that's vague and ambiguous. I don't think
6 the children were asked to say what it means.
7 I think they were asked to match.

8 Q. (By Mr. Burton) Okay. Let me rephrase
9 the question. Regardless of whether we use the
10 phrase "forced to choose" or "forced choice," the
11 bottom line is that when the children were asked to
12 match the logo with the product, they didn't have
13 the opportunity to say, "I don't know" or "I can't
14 do that."

15 A. That may be correct.

16 Q. And you had how many products on the
17 board?

18 A. I believe it's 12.

19 Q. So doesn't that mean, Dr. Schwartz, that
20 by requiring the children to match when shown a
21 logo, that you had increased the likelihood of a
22 correct answer by at least 8 percent?

23 MS. FLOWERS: Object to the form.

24 THE WITNESS: I don't know that answer,
25 because statistics are beyond what I

1 understand.

2 Q. (By Mr. Burton) Don't have any feeling
3 about that at all?

4 A. If you're asking me if they have to pick
5 one of those, then they do. And that can somewhat
6 be eliminated by assuming that they can't answer the
7 surgeon general's warning. So if they pick an
8 answer for the surgeon general's warning, that would
9 appear to be a random choice.

10 If that occurs 8 percent, then that's the
11 random answer. So every percentage -- so you know
12 what the guesstimate would be.

13 Q. So the fact of the matter is, there would
14 be an 8 percent chance -- the number of correct
15 answers would be increased by 8 percent?

16 MS. FLOWERS: Object to the form.

17 THE WITNESS: I honestly don't know
18 that answer.

19 Q. (By Mr. Burton) Is the fact that the
20 children were not given an "I don't know" option
21 disclosed in the article?

22 A. I don't remember it being given.

23 Q. Would that be important to know by a
24 reader of JAMA to know?

25 A. It is not important to me.

1 Q. Do you know whether Dr. Fischer has
2 provided an "I don't know" option in any of his
3 other studies?

4 A. I don't know.

5 Q. Have you ever conducted a survey of this
6 type?

7 A. No.

8 Q. So this is the only one that you've
9 done?

10 MS. FLOWERS: Object to the form.

11 THE WITNESS: The only --

12 Q. (By Mr. Burton) Study of this type that
13 you've done.

14 A. Matching?

15 Q. Yes.

16 A. Yes.

17 Q. Now, with respect to the six-year-olds, I
18 think we've established that they all came from one
19 elementary school; is that right?

20 A. Except, apparently, No. 230, all have
21 come from me doing it, that is correct. No, I'm
22 sorry. I did apparently all of the six-year-olds.

23 Q. Correct.

24 A. That is my understanding.

25 Q. And we've established that the

1 six-year-olds, all of the six-year-olds, saw the
2 cards in the same order.

3 A. I understand that to be correct.

4 Q. And we've also discovered that none of
5 the six-year-olds were black.

6 MS. FLOWERS: Object to the form.

7 THE WITNESS: It appears from what you
8 have shown me that none of the six-year-olds
9 are African-Americans, that is correct.

10 Q. (By Mr. Burton) Do you think there's
11 something that would bear on that that I haven't
12 shown you?

13 A. I don't know what all I have. I know
14 what you've given me. And, again, I don't remember
15 all the data.

16 MS. FLOWERS: The only thing that would
17 concern me was the one that wasn't marked,
18 him answering the question.

19 MR. BURTON: As an aside, I think it's
20 actually marked very faintly as Caucasian.

21 Q. (By Mr. Burton) Was any of that
22 information disclosed in the JAMA article with
23 respect to the six-year-olds?

24 A. That none of them were African-Americans.

25 Q. That they all came from one school, that

1 they all saw the cards in the same order, and they
2 were all either Caucasian with the exception of one
3 Eurasian and one Oriental.

4 MS. FLOWERS: I'm going to object to
5 that as compound. Maybe if we broke it down,
6 he'd have a little better time with it.

7 Q. (By Mr. Burton) Does the study disclose
8 that all of the six-year-olds came from a single
9 school?

10 A. To the best of my knowledge, it does not
11 say that.

12 Q. Does it disclose that all of the
13 six-year-olds saw the cards in the same order?

14 A. To the best of my knowledge, it does not
15 say that.

16 Q. Does it disclose the demographic makeup
17 of the six-year-old sample?

18 A. To the best of my knowledge, it does not
19 say that.

20 Q. Since we know they came from one school,
21 they saw the cards in the same order and they
22 contained no African-Americans. Would those facts
23 be important to you as a reader of JAMA in
24 evaluating the validity of the six-year-old
25 component of this study?

1 A. If that were the sole part of the study,
2 then it may matter.

3 Q. Well, putting aside whether it's the sole
4 part of the article, with respect to the
5 six-year-old sample, would you want to know those
6 facts as a reader of JAMA in order to evaluate its
7 validity?

8 A. To me, that would not matter.

9 Q. So it wouldn't matter that they were in
10 the same school, shown the cards in the same order,
11 and contained no African-Americans?

12 MS. FLOWERS: Object to the form.

13 Asked and answered.

14 THE WITNESS: To me, that does not
15 matter.

16 Q. (By Mr. Burton) Even where the analysis
17 that has captured the attention of the press and the
18 coverage of this study has been focused on that
19 six-year-old group?

20 A. Again, that would be asking me what I
21 think of what the media is responding to, versus a
22 limitation of any study.

23 Q. I'm not sure I understand what you mean.

24 A. To me, if you ask me whether this was --
25 whether all possible limitations were addressed and

1 whether all possible accidents were addressed,
2 they're not in there. Does that mean that this
3 makes this a bad study or shouldn't be addressed in
4 the media, I think, are two different answers.

5 Q. The conclusion of the article, or one of
6 the conclusions, perhaps the primary conclusion, is
7 R.J. Reynolds Tobacco Company is as effective as the
8 Disney Channel in reaching six-year-old children,
9 reading, I think, the next to last sentence.

10 Do you see that?

11 A. I see that.

12 Q. Okay. Given the fact that that's the
13 conclusion of the article, would you want to know as
14 a reader to evaluate that conclusion that the
15 six-year-old study was done at one school, consisted
16 of no African-Americans, and was done showing the
17 cards in the same order, which was a violation of
18 the study's protocol?

19 MS. FLOWERS: Object to the form of the
20 question and the characterization of the
21 conclusion of the study and the compound
22 nature.

23 Try to answer it if you can.

24 THE WITNESS: For me, the sentence that
25 begin -- the previous paragraph, several

1 limitations to the current study, the
2 subjects were a convenience sample.

3 Q. (By Mr. Burton) And it goes on to say,
4 "Therefore, it did not include children cared for
5 at home."

6 A. It is unknown how the sampling method
7 might have influenced the study results. I think
8 all we can do with any article, and including one
9 that has 229 kids, while that's a reasonable number,
10 it's certain a very small number. It's meant to say
11 this is the first try at something, let's look at
12 how we can make it better. And that would be how I
13 would take it.

14 Q. The sample of six-year-olds was how many?

15 A. 23.

16 Q. And Dr. Fischer has testified that you
17 cannot draw any valid conclusions from a sample of
18 that size; would you agree with that?

19 MS. FLOWERS: Object to the form.

20 THE WITNESS: I don't know enough about
21 statistics.

22 Q. (By Mr. Burton) Considering that we're
23 dealing with a sample of 23 six-year-olds, as a
24 reader of JAMA, would it be important for you to
25 know that they came from the same school?

1 A. I think you've asked me that.

2 Q. Well, I'm trying to avoid counsel's
3 objection as to the compound nature of the question.

4 A. My answer would be I think I apparently
5 don't read these as critically as some might want to
6 make it. And, therefore, I look at this study and
7 say that sure is interesting.

8 Q. Are you familiar with the concept of
9 generalized ability?

10 A. If you can explain it to me, I would be
11 glad to try to understand it.

12 Q. But you're not familiar with the concept
13 as it relates to survey techniques?

14 A. No.

15 Q. We've established that with respect to
16 this 23 six-year-olds, that the methodology set
17 forth in the study, in vis-a-vis, the randomization
18 of the cards was not followed; is that right?

19 A. Yes, you've shown that there are errors
20 in the study.

21 Q. As a reader of JAMA, would you want to
22 know that the protocol set forth in the study was
23 not followed with respect to the six-year-olds?

24 A. I expect that accidents do occur. And
25 that for me, I would assume if I saw a study similar

1 to this that the authors had tried to the best of
2 their ability to do everything that they said they
3 had done and trying to be reasonable in saying that
4 these are limits. And I expect that that is what
5 they have done.

6 Q. But the randomization protocol was
7 important enough to list it in the study in the
8 first place, wasn't it?

9 A. Yes.

10 Q. So as a reader, wouldn't you want to know
11 whether the methodology and the randomization that
12 the authors had deemed important enough to include
13 in the study had not been followed?

14 MS. FLOWERS: Objection, asked and
15 answered.

16 THE WITNESS: Again, from my point, me
17 alone, I would say that I am assuming that
18 accidents do, in fact, happen. And if I were
19 to read this study, I would accept that this
20 study was as truthful as the authors could
21 make it and that if there had been an error,
22 that that's why this is a preliminary study;
23 that other people would then go out and try
24 to either reproduce it or repudiate it.

25 Q. (By Mr. Burton) What makes you state

1 this is a preliminary study?

2 A. Because this is a very small study.

3 Q. Do you assume that there are errors in
4 all of the studies that you read?

5 A. Do I assume that?

6 Q. Uh-huh.

7 A. I assume that accidents happen in
8 studies. And whether they occur in every single
9 study doesn't change that some occur.

10 Q. Do you think authors, primary authors,
11 have an obligation to confirm the accuracy of the
12 methodology that's set forth in their reports?

13 A. I think that the primary author has an
14 obligation to make sure that as much is accurate as
15 possible.

16 Q. And it would not have been difficult to
17 determine what the nature -- or how the sample of
18 six-year-olds were conducted, would it?

19 A. I don't know what you mean by
20 "difficult."

21 Q. Well, once the data collection forms were
22 completed by yourself, it wouldn't have been
23 difficult to review them and determine that they had
24 been shown in the wrong order, would it?

25 A. It may have been very difficult. If you

1 had one person collecting, one person putting it in
2 the computer, and then a different person analyzing
3 the data, and then finally another person
4 deciding -- I'm sorry, running the data -- and then
5 another person deciding what that run meant.

6 Q. Do you know what efforts were made by Dr.
7 Fischer to conclude the opinions as reflected in the
8 study?

9 A. No, I do not know.

10 Q. Do you know why the sample of the
11 six-year-olds was so small as by comparison to the
12 other sample, the other children?

13 A. No.

14 Q. Do you remember any discussion about
15 that?

16 A. No.

17 (Discussion off the record.)

18 Q. (By Mr. Burton) Dr. Schwartz, do you
19 believe that the bias of the researcher is something
20 that should be disclosed in an article such as the
21 one published in JAMA? Do you understand what I
22 mean?

23 A. I do understand. I don't know how to
24 answer that question. I think that when people say
25 their support comes from, I think that is

1 important. I think that a physician would normally
2 be expected to say that cigarettes are bad for your
3 health. So I can't say anything specific about this
4 article.

5 Q. I'm talking about general. Should a
6 researcher disclose his bias in an article?

7 A. Is that to say that I think this is going
8 to be true? I don't understand how -- I honestly
9 don't understand how to answer that in a general
10 sense.

11 Q. If a researcher brings to the table a
12 bias with respect to the study he is conducting,
13 should that be disclosed in the study somewhere?

14 A. For me, that would be too general to
15 answer.

16 Q. Let's assume that Dr. Fischer is a member
17 of DOC. You know what DOC is, right?

18 A. Yes.

19 Q. And that DOC is an anti-smoking group.

20 A. Are we assuming that that's correct?

21 Q. Do you disagree with that?

22 A. Again, I don't know enough about DOC to
23 know that it's anti-smoking.

24 MS. FLOWERS: I believe his prior
25 testimony didn't use those words. Those are

1 your words, counselor.

2 MR. BURTON: I understand that.

3 Q. (By Mr. Burton) Let's assume for the
4 moment it is an anti-smoking group.

5 A. Okay.

6 Q. Do you believe that should have been
7 disclosed in this study?

8 A. It is disclosed.

9 Q. It is an anti-smoking?

10 A. It's disclosed that it was supported by a
11 grant from Doctors Ought to Care.

12 Q. Right.

13 A. And, in fact, was listed before the the
14 American Cancer Society.

15 Q. So you think that's all the disclosure
16 that needed to be done.

17 A. I can't say what other people might
18 want. But for me, that's acceptable to know.

19 MR. BURTON: That's all I have.

20 MS. FLOWERS: I would like just a
21 couple of minutes on redirect.

22 DIRECT EXAMINATION

23 BY MS. FLOWERS:

24 Q. Dr. Schwartz, I'm Jodi Flowers. I
25 represent the State of Mississippi in this action.

1 Have we ever met before today?

2 A. No.

3 Q. Have I or anyone else working on behalf
4 of the State of Mississippi ever asked you to serve
5 as a witness in this case?

6 A. No.

7 Q. Have you been asked to serve as a witness
8 in any other cases involving tobacco litigation?

9 A. No.

10 Q. Other than our discussion here today
11 about the brand logo recognition study, have you
12 reviewed this article in any detail since it was
13 published?

14 A. No.

15 Q. While you were testing the children in
16 conjunction with the study, did you coerce them in
17 any fashion?

18 MR. BURTON: Object to the form.

19 Q. (By Ms. Flowers) You can answer.

20 A. No.

21 Q. Based on your observations and experience
22 in collecting the data, were the data and the study
23 collected fairly?

24 MR. BURTON: Object to the form.

25 THE WITNESS: Yes.

1 Q. (By Ms. Flowers) Based on your
2 observation and experience, did you or any of the
3 other researchers that you may or may not have
4 observed manipulate the data in any fashion?

5 MR. BURTON: Object to the form.

6 THE WITNESS: I don't know of any
7 manipulation of the data.

8 Q. (By Ms. Flowers) The children played a
9 simple matching game, didn't they?

10 A. Yes.

11 Q. Based on your observations and
12 experience, is Dr. Fischer an honest researcher?

13 A. Yes.

14 Q. Were you aware that when Dr. Fischer
15 learned during his deposition that the six-year-olds
16 were not randomized, that he immediately wrote to
17 JAMA and notified them of this fact? Were you aware
18 of that?

19 A. No, I was not.

20 Q. Do you think that was the proper thing to
21 do under the circumstances?

22 A. Yes.

23 Q. Were you aware that after the study came
24 out in I believe 1991 that R.J. Reynolds subpoenaed
25 Dr. Fischer, and one of the things that they asked

1 for were the names of the children.

2 A. Yes.

3 MR. BURTON: Object to the form.

4 Q. (By Ms. Flowers) In your opinion as a
5 researcher and a physician, would it have been
6 proper for Dr. Fischer to turn over these names?

7 MR. BURTON: Object to the form.

8 THE WITNESS: It is not proper to turn
9 over names.

10 Q. (By Ms. Flowers) Why is that?

11 A. They're protected by consent and the laws
12 that go behind that.

13 Q. In your opinion, are children
14 particularly vulnerable?

15 A. Yes. Children are particularly
16 vulnerable.

17 MS. FLOWERS: That's all I have.

18 REDIRECT EXAMINATION

19 BY MR. BURTON:

20 Q. Are you aware, Dr. Schwartz, that
21 Reynolds withdrew its request for the names of the
22 children?

23 A. I'm not aware of either direction.

24 Q. You never were told that?

25 A. No.

1 Q. How was it that you knew that there had
2 been a subpoena issued to Dr. Fischer?

3 A. It was in the paper.

4 Q. Did you read the article in the newspaper
5 or I believe it was an editorial -- I think it was
6 entitled blowing smoke in which the theme was what's
7 Dr. Fischer trying to hide?

8 A. I don't remember that.

9 Q. Don't remember that at all?

10 A. No.

11 Q. Did Dr. Fischer consult you before he
12 wrote JAMA after his deposition was taken and he
13 learned of the problem with the randomization
14 protocol?

15 A. No.

16 Q. So you didn't review that letter?

17 A. No.

18 MR. BURTON: That's all I have.

19 MS. FLOWERS: Thank you for your time.

20 (Deposition concluded at 12:30 p.m.)
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23
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(Original Exhibits 1 through 11 have been
attached to the original transcript.)

1 STATE OF GEORGIA:
2 COUNTY OF RICHMOND:

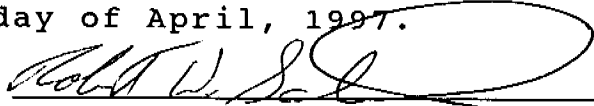
3 I hereby certify that the foregoing
4 transcript was reported, as stated in the caption,
5 and the questions and answers thereto were reduced
6 to typewriting under my direction; that the
7 foregoing pages 1 through 96 represent a true,
8 complete, and correct transcript of the evidence
9 given upon said hearing, and I further certify that
10 I am not of kin or counsel to the parties in the
11 case; am not in the employ of counsel for any of
12 said parties; nor am I in anywise interested in the
13 result of said case.

14 Disclosure Pursuant to O.C.G.A. 9-11-28 (d):

15 The party taking this deposition will receive
16 the original and one copy based on our standard and
17 customary per page charges. Copies to other parties
18 will be furnished at one half that per page rate.
19 Incidental direct expenses of production may be
20 added to either party where applicable.

21 Our customary appearance fee will be charged to
22 the party taking this deposition.

23 This, the 2nd day of April, 1997.

24 
25 ROBERT W. SCHEID, CCR-B-1461, RPR
My commission expires on the
12th day of February, 1999.

